

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOSEPH MARZULLO,

Plaintiff,

vs.

FB HOSPITALITY, LLC

Defendant.

STATE OF NEW YORK)
)
COUNTY OF NASSAU)

SS.:

YEKATERINA TSYVKIN, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and an associate at the firm of Liebowitz Law Firm PLLC, attorneys for plaintiff in the above-entitled action and I am familiar with all the facts and circumstances in this action.
2. I make this affidavit pursuant to this Court's Individual Rules and Practices in Civil Cases, Rule 6 and Attachment A, in support of plaintiff's motion for the entry of a default judgment against defendant.
3. Plaintiff Joseph Marzullo filed the Complaint in this action on January 16, 2017. See Dkt. 1. On March 20, 2017, the Defendant was served a Summons, Civil Cover Sheet and Complaint at its place of business. See Dkt. 9. Pursuant to Fed. R. Civ. P. an answer or a response was due on April 10, 2017.

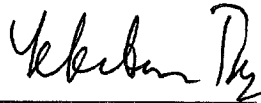
4. An initial pretrial conference was adjourned *sine die*. See Dkt. 12. On May 15, 2017 the Plaintiff moved for default judgment pursuant to the Court's Order. See Dkt. 16.
5. The default judgment would be applicable to the one and only defendant.
6. We propose actual damages in the amount of \$31,000, including interest, for copyright infringement of (31) thirty –one photographs. We assess each infringed photograph incurred actual damages in the amount of \$1,000, which includes the loss sustained by the Plaintiff, the amount saved by the Defendant and any other benefits or advantage gained as a result of the infringement. Furthermore, we ask the Court to grant reasonable attorney's fees and costs in amount of \$2,860 pursuant to this Court's rules. In addition to regular court filing fees and serving costs totaling \$460, the Plaintiff's attorney spent 8 hours at \$300 per hour on this matter.
7. We believe that an inquest into damages would be unnecessary because any inquest would be similarly deficient since the Defendant has chosen to abstain from these proceedings. Without Defendant's participation, the Court will also have to speculate as to the amount the Defendant saved and benefits or advantages gained as a result of the infringement. The Plaintiff offers a conservative estimate given that these are celebrity photographs and the exclusive nature of the event photographed. Given the high profile of the event, the photographs are valuable and have undoubtedly brought web-traffic and visitors to the infringer's website. A further inquiry, however, will

probably not yield much more information, in the absence of the Defendant's appearance.

DATED: May 14, 2017

Valley Stream, NY

Respectfully Submitted,


/s/

Yekaterina Tsyvkin
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Attorneys for Joseph Marzullo